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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re ANGIE P.,
a Person Coming Under the Juvenile Court Law.

B167324
(Los Angeles County
Super. Ct. No. CK51906)

LOS ANGELES COUNTY DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

MOISES P.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles
County, Emily Stevens, Judge. Affirmed.

Lori A. Fields, under appointment by the Court of Appeal, for
Defendant and Appellant.

Lloyd W. Pellman, County Counsel, and Aleen Torossian, Deputy
County Counsel, for Plaintiff and Respondent.

Orren & Orren and Tyna Thall Orren for the Minor.

Father Moises P. appeals from a juvenile court order dismissing a juvenile dependency petition brought by the Department of Children and Family Services (DCFS) pursuant to Welfare and Institutions Code section 300.¹ DCFS responds with a letter stating that appellant has fully discussed the issues. We agree with the respondent, the minor Angie P., that substantial evidence supports the juvenile court's finding that the evidence was insufficient to sustain the petition's allegations of sexual abuse. Accordingly, we affirm.

FACTS

On April 23, 2003, DCFS filed a section 300 petition on behalf of 10-year-old Angie P. The petition alleged that in February Angie was sexually abused by her mother's live-in boyfriend, who fathered Angie's youngest sibling and whom Angie referred to as her stepfather.

According to the DCFS detention report, the minor lived with her mother and the boyfriend, and the minor visited her father, appellant, regularly on weekends. When appellant picked up his daughter from school in April 2003, she appeared to be sad. In response to his questioning, the minor said that her mother's boyfriend had inappropriate sexual contact with her on two occasions. DCFS interviewed the minor, who said she did not confide in her mother because she did not want her to get mad at the boyfriend. Mother denied any inappropriate touching of her children by her boyfriend, and said that she thought her ex-husband was behind Angie's accusation because he was trying to obtain custody of Angie and their son, Randy P. Randy said he never saw his sister touched "in her private area" by the boyfriend.

¹ All further statutory references are to the Welfare and Institutions Code.

A police crime report was attached to DCFS's detention report. According to the report, when a police officer asked Angie if she wanted to talk about what happened, she "put her head down and seemed very sad." As she told her story, "she became even sadder and began to cry." Appellant reportedly said he noticed his daughter appearing distant and not her usual self, and that one day when he picked her up from school, "he could tell that something was troubling her. The father stated that he took her aside from her brother and asked her to please tell him what was wrong. It was then that the Vict[im] began to cry and told her story to the father. The father contacted the police. The father also contacted the mother and demanded that she and the Susp[ect] drive over to his home."

The police reported that when Angie's mother was interviewed, she said that she was unaware of any inappropriate touching incident. She reportedly thought "that because she and the father's new wife have been having communication problems that the ex-wife had 'made' the Vict[im the minor] believe that something had happened between the Vict[im] and the Susp[ect] when nothing really happened. When asked if the mother thought her daughter would lie to the paramedics and the police the mother replied 'I don't know, I don't know it is true.'"

On April 23, 2003, a detention hearing was held. The juvenile court noted that the mother's boyfriend moved out of their home. The court found a prima facie case for detention because Angie's allegation "was repeated not once but a couple of times to different people and in detail and consistently. . . . Children often recant. I will not be able to get to the bottom of this today." The court continued the matter to May 21 for adjudication.

According to the DCFS jurisdiction/disposition report prepared for the May 21 hearing, on May 12, 2003, a DCFS social worker interviewed Angie about her allegations. Angie reportedly said she gets along with her mother's boyfriend,

and that he is a “good person.” She said she falsely accused him of inappropriate contact “Because when my mom and dad separated I was little and I didn’t know why. Now I’m older and I want them to go back together.” Angie allegedly wanted her mother’s boyfriend to move back in, and was concerned that appellant was “threatening” to take her away from her mother because “[h]e doesn’t want to pay child support.”

In addition, Angie reportedly said that she told her stepmother about the alleged February 2003 incident a week or weeks prior to telling her father. According to the report, Angie said, “I only told her that he touched me.” Angie further stated that around the first part of April she saw a sex education video at school. When she came home from school, her mother explained what semen is.

Angie’s mother was reportedly interviewed by the social worker on the same day as Angie, on May 12. She allegedly said that there was a dispute over the amount of monthly child support to be paid by appellant, and that he said he would rather have custody of their children than pay a higher amount of child support. Appellant reportedly threatened mother that he was going to fight for custody of their children, and he told his ex-wife that he was going to call the police about the alleged sexual misconduct. Mother also said that her daughter confided that she lied and that she asked for forgiveness for her untruthfulness. Angie allegedly told her mother that she told appellant that there was sexual misconduct because he was asking her what was wrong and because Angie wanted her parents to reunite. Angie’s mother then allegedly told her daughter that they could not because they had their own lives.

DCFS opined that Angie and her siblings appeared to be safe in their mother’s home, and recommended that they remain there. It was uncertain if Angie was pressured to recant so that her mother would not lose child custody. To help DCFS determine the veracity of the allegations and whether the petition

should be dismissed, DCFS recommended that Angie talk to a therapist about the custody dispute, her parents' divorce and the allegations even though Angie had recanted.

On May 20, DCFS filed an information form reporting that the DCFS social worker interviewed appellant on May 15. Appellant accused his ex-wife of calling and mistreating his current spouse, and telling Angie that they will be together. Appellant also reportedly said that Angie recanted the allegations against her mother's boyfriend, and that she avoided looking at appellant during her recantation. Asked by appellant why she changed her story, Angie allegedly looked at appellant and said, "I don't want anyone to go to jail. I don't want [the boyfriend] to go to jail. He's been good to us." According to the DCFS, appellant said that after Angie made the allegations to him, he brought her to his ex-wife, and had Angie tell her mother what had allegedly happened with the boyfriend. After Angie allegedly did so, his ex-wife responded, "No Angie that's not true. Are you lying?" The mother told Angie that that the court can take her and her brother away from their mother. She also told Angie, "Isn't it because of the sex video you saw at school that you put it in your head and invented it?"

DCFS subsequently filed a second information form stating that on May 19 the boyfriend was interviewed. According to DCFS, the boyfriend stated that Angie's mother called him one day and told him that she and appellant had an argument. Afterward, appellant called the boyfriend "laughing threatening that he was going to take away the children. [Mother] . . . told [the boyfriend], '[Appellant's] telling [mother] that Angie was abused.'"

At the May 21 hearing, Angie admitted that she had accused her mother's boyfriend of sexual misconduct, but testified that the accusation was false. Angie testified that she made the accusation "[b]ecause I wanted my mom and my dad to be together because I felt sad because they were always fighting,

and my dad was with my stepmom and my mom was with my stepdad, and they always had problems. And I wanted them to be happy like we used to be.” Asked if she was retracting because someone was pressuring her, Angie answered, “No.” She also answered in the negative to the question, “And do you have any kind of reason for taking it back because you think it’s going to make it easier for somebody?” Angie testified that she decided to retract because she felt sad and bad about lying. Angie testified that she decided to tell her mother the truth because she wanted her mother happy, and she had seen her mother very happy with the boyfriend. Angie testified that her school had sex education videos, and that her mother had at one point sometime before the accusation told Angie to report inappropriate touching to an adult.

The juvenile court pointed out inconsistencies in Angie’s prior statements, with Angie having told the police a very different story than what she had told her father. The court noted Angie’s “matter of fact” demeanor on the witness stand, and found her credible when she said no sexual misconduct occurred. The court consequently dismissed the dependency petition on the ground of insufficient evidence.

DISCUSSION

Appellant asks us to remand the instant case to the juvenile court with instructions that the court find the petition true and conduct a disposition hearing.

We review the juvenile court’s dismissal of the dependency petition under the substantial evidence standard of review. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199-200.) Accordingly, we defer to the trier of fact’s decision on issues of credibility, and we have “no power to judge the effect or value of, or to weigh the evidence; to consider the credibility of witnesses; or to resolve conflicts in, or make inferences or deductions from the evidence. We review a cold record

and, unlike a trial court, have no opportunity to observe the appearance and demeanor of the witnesses. [Citation.] . . . It is not an appellate court's function, in short, to redetermine the facts. [Citation.] Absent indisputable evidence of abuse -- evidence no reasonable trier of fact could have rejected -- we must therefore affirm the juvenile court's determination." (*Id.* at pp. 199-200.)

Appellant relies on *In re Cindy L.* (1997) 17 Cal.4th 15 as legal support for sustaining the dependency petition's sexual abuse allegations. But *Cindy L.* concerned a 4-year-old girl, 6 years younger than Angie was, who was seen in preschool touching her vagina underneath her underwear. Told by the teacher's aide not to do that, the preschooler replied, "Well, my father always touches me right here." (*Id.* at p. 19.) The minor in *Cindy L.* was subsequently examined by a physician who "did not 'visualize' a hymen, and concluded that these findings were consistent with the reported history of sexual abuse." (*Id.* at p. 20.) In the case before us, there is no physical evidence of sexual abuse, and the girl did not engage in any inappropriate sexual behavior in public. Further, unlike a 4-year-old girl, the 10-year-old in the case before us had viewed sex education videos in school and her mother had discussed sexually related matters with her. Thus, *Cindy L.* is factually distinguishable from the instant case.

Five factors are relevant in determining the reliability of hearsay statements made by child witnesses in sexual abuse cases: (1) spontaneity and consistent repetition; (2) the child-declarant's mental state; (3) use of terminology unexpected of a child of similar age; (4) lack of motive to fabricate; and (5) whether the child understands the difference between truth and falsehood. (*In re Lucero L.* (2000) 22 Cal.4th 1227, 1239, 1247-1248.)

The record indicates that Angie's allegations of inappropriate contact were not made spontaneously. She accused her mother's boyfriend of engaging in misconduct in February 2003, but did not make the accusation to appellant until

April. Moreover, Angie's statements were made to appellant not spontaneously, but only in response to her father's questioning. As for her statements to her stepmother, it appears that they were not made immediately after the alleged touching, but were made in March or April, at most weeks before Angie confided in her father. Further, it is unclear whether Angie revealed the sexual nature of the alleged touching. All she apparently told the stepmother was that the boyfriend "touched" her with his fingers, but Angie did not specify the type of touching that occurred.

Although Angie's description to the police of the alleged sexual misconduct and her knowledge of semen may not be expected of a 10-year-old girl, her familiarity is not surprising, given her recent exposure to sex education videos at school and her mother's explanation about semen.

The record indicates that Angie had a motive to fabricate the allegations of abuse -- she wanted her parents to reconcile. The record also indicates that Angie understood the difference between truth and falsehood. She testified that she recanted because she felt remorseful. Angie answered "yes" to the question, "You know it's a bad thing to tell a lie?"

Appellant points out that the record also contains evidence that Angie knew that her mother was happy with the boyfriend and that Angie was fearful that her mother and the boyfriend could go to jail and that she did not want anyone to go to jail. But under the applicable standard of review, we must uphold the juvenile court's decision absent indisputable evidence of sexual abuse. (*In re Sheila B.*, *supra*, 19 Cal.App.4th at p. 200.)

DISPOSITION

The order dismissing the dependency petition is affirmed.

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HASTINGS, J.

We concur:

VOGEL (C.S.), P.J.

EPSTEIN, J.